

STATE OF TENNESSEE
DEPARTMENT OF FINANCIAL INSTITUTIONS

IN THE MATTER OF:)	
)	
GOLDENS PAWN & MONEY STORE,)	TDFI No.: 08-56-C
)	
Respondent.)	

EMERGENCY CEASE AND DESIST ORDER

The Commissioner of the Tennessee Department of Financial Institutions (hereinafter "Commissioner"), having determined that Goldens Pawn & Money Store (hereinafter "Respondent") has violated and is currently violating the Tennessee Title Pledge Act (hereinafter "Act"), Tennessee Code Annotated Sections (hereinafter "TENN. CODE ANN. §§") 45-15-101, *et seq.*, and that extraordinary circumstances require immediate action in this matter, hereby issues the following EMERGENCY CEASE AND DESIST ORDER pursuant to TENN. CODE ANN. § 45-1-107(a)(4), TENN. CODE ANN. § 45-1-107(c), TENN. CODE ANN. § 45-15-118(a)(1), and TENN. CODE ANN. § 45-15-118(b)(3).

JURISDICTION AND IDENTIFICATION OF THE PARTIES

1. TENN. CODE ANN. § 45-1-104 provides that the Tennessee Department of Financial Institutions (hereinafter "Department") is charged with the execution of all laws relative to persons doing or engaged in a banking or other business as provided in Title 45 (Banks and Financial Institutions).

2. TENN. CODE ANN. § 45-1-107(a)(4) provides that, in addition to other powers conferred by Title 45 (Banks and Financial Institutions), the Commissioner has the authority to order any person to cease violating a provision of Title 45 (Banks and

Financial Institutions) or lawful regulation issued under Title 45 (Banks and Financial Institutions). Pursuant to TENN. CODE ANN. § 45-1-107(c), notice and opportunity for a hearing shall be provided in advance of the Commissioner issuing such an order, except that in cases involving extraordinary circumstances requiring immediate action, the Commissioner may take such action but shall promptly afford a subsequent hearing upon application to rescind the action taken.

3. The Commissioner is responsible for the administration, enforcement, and interpretation of the Act, and any regulations promulgated pursuant to the Act. TENN. CODE ANN. §§ 45-15-101, *et seq.*

4. TENN. CODE ANN. §§ 45-15-102(1) and (3) state that the policy of this state and the purpose of Title 45 (Banks and Financial Institutions), Chapter 15 (Title Pledges), include ensuring "...a sound system of making title pledge loans through statewide licensing of title pledge lenders..." by the Department and providing "...for the examination and regulation of title pledge lenders by the..." Department.

5. Pursuant to TENN. CODE ANN. § 45-15-118(a)(1), if, after notice and opportunity for a hearing, the Commissioner finds that a person has violated the Act or any administrative regulation issued pursuant to the Act, the Commissioner has the authority to order the person to cease and desist violating the Act or any administrative rules issued pursuant to the Act. However, in cases involving extraordinary circumstances requiring immediate action, the Commissioner may take such action without providing the opportunity for a prior hearing pursuant to TENN. CODE ANN. § 45-15-118(b)(3). In such circumstances, the Commissioner shall promptly afford a subsequent hearing upon an application to rescind the action that is filed with the

Commissioner within twenty (20) days after receipt of the notice of the Commissioner's emergency action pursuant to TENN. CODE ANN. § 45-15-118(b)(3).

6. The Respondent is a general partnership managed by an individual named A. Neal Golden (hereinafter "Golden"). As of the entry date of this EMERGENCY CEASE AND DESIST ORDER, the Respondent is operating an unlicensed title pledge lending business and a licensed deferred presentment services business at 509 West College Street, Fayetteville, Tennessee 37334.

7. The Department issued the Respondent a Tennessee title pledge lender's license (license number 1447) on February 21, 2006 (02/21/06). Said title pledge lender's license expired on October 31, 2007 (10/31/07), due to the Respondent's failure to submit a licensure renewal application and to pay the licensure renewal fee as required by TENN. CODE ANN. § 45-15-106(i).

8. The Department issued the Respondent a Tennessee deferred presentment services license (license number 1759) on February 24, 1999 (02/24/1999). On or about September 7, 2007 (09/07/07), concerning said deferred presentment services license, the Respondent submitted a licensure renewal application and paid the licensure renewal fee as required by TENN. CODE ANN. § 45-17-110.

FACTUAL ALLEGATIONS

9. At all times relevant hereto, the Respondent did not possess a Tennessee license from the Department to lawfully engage in the business of title pledge lending in this state.

10. According to a letter dated December 7, 2007 (12/07/07), from Stephen Henley (hereinafter "Henley"), Director of Licensing for the Department, and addressed to Golden, Henley notified the Respondent that it had failed submit a licensure renewal application and had failed to pay the licensure renewal fee by October 1, 2007 (10/01/07). Additionally, pursuant to said letter, Henley notified the Respondent that its license to lawfully engage in the business of title pledge lending in this state had expired as of October 31, 2007 (10/31/07), and consequently, that it would be a violation of the Act for the Respondent to engage in the business of title pledge lending in this state after October 31, 2007 (10/31/07). Furthermore, pursuant to said letter, Henley notified the Respondent that it must submit a licensure application for a new title pledge lender's license and pay the licensure fee if the Respondent wanted to lawfully engage in the business of title pledge lending in this state in the future.

11. The letter referenced in paragraph ten (10) was mailed to the Respondent via United States Certified Mail. The United States Certified Mail Return Receipt indicates that said letter was delivered on December 13, 2007 (12/13/07), and it appears to bear the signature of an individual named Ruth Golden.

12. In addition to the letter referenced in paragraph ten (10), Henley mailed an additional letter to the Respondent dated January 29, 2008 (01/29/08). According to said letter, Henley returned the Respondent's licensure renewal fee and, once again, notified the Respondent that its title pledge lender's license had expired on October 31, 2007 (10/31/07). Additionally, pursuant to said letter, Henley notified the Respondent that it may not engage in the business of title pledge lending in this state as of October 31, 2007

(10/31/07), and to unlawfully engage in such business may subject the Respondent to any and all penalties set forth in the Act.

13. Following the aforementioned letters, the Department received a licensure application for a new title pledge lender's license and the corresponding licensure fee from the Respondent on or about March 4, 2008 (03/04/08). Said licensure application is still pending as of the entry date of this EMERGENCY CEASE AND DESIST ORDER.

14. On or about March 31, 2008 (03/31/08), Compliance Examiner-in-Charge Michael Wiggins (hereinafter "Wiggins") conducted an onsite examination of the Respondent's unlicensed title pledge lending business at 509 West College Street, Fayetteville, Tennessee 37334, pursuant to the Act.

15. During the course of the onsite examination referenced in paragraph fourteen (14), Wiggins uncovered recent evidence that the Respondent had continued to engage in the business of title pledge lending in the state of Tennessee despite the fact that the Respondent's title pledge lender's license had expired on October 31, 2007 (10/31/07).

16. Specifically, Wiggins documented and photocopied approximately forty-eight (48) title pledge agreements and/or renewals, covering the approximate time period November 2, 2007 (11/02/07) through March 21, 2008 (03/21/08), that the Respondent had entered into after the expiration (10/31/07) of its title pledge lender's license.

17. Pursuant to the onsite examination referenced in paragraph fourteen (14), Wiggins drafted an examination report that included a "Violations from Examination" section. According to said examination report, under the "Violations from Examination" section, Wiggins specifically noted "[t]he examiner noted that the entity has engaged in

title pledge activity since the license expired on 10/31/07. By continuing to operate without a license any loan made during the unlicensed period may be considered null and void....”

18. According to the examination report referenced in paragraph seventeen (17), the Respondent was provided a copy of the examination report at the conclusion of the onsite examination.

19. The aforementioned pattern of engaging in the business of title pledge lending without having first obtained a Tennessee title pledge lender’s license from the Department is an indicator that the Respondent will continue to engage in the business of title pledge lending in this state in the future, notwithstanding the fact that the Respondent’s title pledge lender’s license expired on October 31, 2007 (10/31/07).

CAUSES OF ACTION

20. The factual allegations as stated in paragraphs nine (9) through nineteen (19) of this Order, incorporated by reference as though specifically set forth herein, are sufficient to establish by a preponderance of the evidence that the Respondent has violated and is currently violating TENN. CODE ANN. § 45-15-105(a), in that the Respondent has engaged and is currently engaging in the business of title pledge lending in this state without having first obtained a Tennessee title pledge lender’s license from the Department.

21. The factual allegations as stated in paragraphs nine (9) through nineteen (19) of this Order, incorporated by reference as though specifically set forth herein, are sufficient to establish by a preponderance of the evidence that extraordinary

circumstances require immediate action pursuant to TENN. CODE ANN. § 45-1-107(c) and TENN. CODE ANN. § 45-15-118(b)(3).

POLICY STATEMENT

22. TENN. CODE ANN. § 45-15-105(a) states that no person shall engage in the business of title pledge lending in this state without having first obtained a license from the Department. A separate license is required for each location from which the business is conducted.

23. TENN. CODE ANN. § 45-15-105(b) states that any title pledge agreement entered into without a title pledge lender's license is void as a matter of law, in which case the unlicensed lender making the loan forfeits the right to collect any moneys, including principal, interest, and any fees paid by the pledgor in connection with the title pledge agreement.

24. In order to qualify for a title pledge lender's license, TENN. CODE ANN. § 45-15-106(a)(2) requires an applicant, in addition to other requirements, to demonstrate the financial responsibility, financial condition, business experience, character, and general fitness sufficient enough to reasonably warrant the belief that the applicant's business will be conducted lawfully and fairly.

25. TENN. CODE ANN. § 45-15-106(a)(1) requires an applicant seeking a title pledge lender's license to demonstrate a tangible net worth, which comprises tangible assets less liabilities, of not less than seventy-five thousand dollars (\$75,000.00) for each location.

26. TENN. CODE ANN. § 45-15-117 states that "[a]ny person who intentionally violates any provision of this chapter commits a Class A misdemeanor."

27. The factual allegations set forth in paragraphs nine (9) through nineteen (19) of this Order, incorporated by reference as though specifically set forth herein, are sufficient to establish by a preponderance of the evidence that the Respondent has violated and is currently violating TENN. CODE ANN. § 45-1-107(a)(4), TENN. CODE ANN. § 45-1-107(c), TENN. CODE ANN. § 45-15-118(a)(1), and TENN. CODE ANN. § 45-15-118(b)(3), by engaging in the title pledge lending business in this state without having first obtained a Tennessee title pledge lender's license from the Department. Said violations have deprived the Commissioner of the opportunity to determine whether the Respondent has the requisite financial responsibility, financial condition, business experience, character, and general fitness sufficient enough to reasonably warrant the belief that its business will be conducted lawfully and fairly, thereby also depriving the Commissioner of the opportunity to make an informed determination of whether to grant the Respondent a license under the Act prior to entering into title pledge agreements with Tennessee pledgors.

EMERGENCY RELIEF

28. Having considered the factual allegations contained herein, the Commissioner has determined that the Respondent has violated and is currently violating the Act, and that extraordinary circumstances warrant immediate action.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

a. That the Respondent shall cease and desist immediately from engaging in the business of title pledge lending in this state without a Tennessee title pledge lender's license pursuant to TENN. CODE ANN. § 45-15-105(a), TENN. CODE ANN. § 45-15-118(a)(1), and TENN. CODE ANN. § 45-15-118(b)(3); and

b. That the Respondent shall cease and desist immediately from collecting any moneys, including principal, interest, and any other fees paid by pledgors in connection with any and all title pledge agreements entered into without a license, and/or otherwise is ordered to cease and desist immediately from enforcing said agreements, including but not limited to the repossession of any and all motor vehicles, pursuant to TENN. CODE ANN. § 45-15-105(b), TENN. CODE ANN. § 45-15-118(a)(1), and TENN. CODE ANN. § 45-15-118(b)(3).

29. The provisions of this Order shall remain in full force and effect unless and until such time as any provision is modified, terminated, suspended or set aside by the Commissioner, an administrative judge, or any court having jurisdiction over the matters addressed herein.

RIGHTS OF THE RESPONDENT

30. The Respondent has the right to a prompt hearing for the purpose of contesting and obtaining rescission of this Order. If a prompt hearing is timely requested by the Respondent, the hearing shall be conducted in accordance with the Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101, *et seq.*, and pursuant to the

Official Compilation Rules & Regulations of the State of Tennessee, Rules of Procedure for Contested Cases, Chapter 0180-6.

31. The sole issue to be considered at the prompt hearing is whether extraordinary circumstances required immediate action in this matter. This Order does not constitute a final adjudication upon the merits, but merely constitutes a temporary, emergency order until such time that a contested case may be promptly instituted by the filing of: 1) a Notice of Opportunity for Hearing and the Rights of the Respondent; and 2) a Notice of Charges.

32. In order to request a prompt hearing, the Respondent must file a written request with the Commissioner within twenty (20) days from receipt of this Order. Any written request for a hearing must be filed with the Commissioner, Tennessee Department of Financial Institutions, Nashville City Center, 511 Union Street, 4th Floor, Nashville, Tennessee 37219. If no such written request is timely filed with the Commissioner, then this Order shall be deemed a Final Order without further legal process.

33. In the event this Order becomes a Final Order, the Respondent may submit to the Commissioner a petition for stay of effectiveness of the Final Order within seven (7) days of the effective date of the Final Order pursuant to TENN. CODE ANN. § 4-5-316.

34. In the event this Order becomes a Final Order, the Respondent may file a Petition for Reconsideration with the Commissioner, stating the specific grounds upon which the relief is requested, within fifteen (15) days of the effective date of the Final Order pursuant to TENN. CODE ANN. § 4-5-317.

35. The Respondent may seek judicial review of this Order by filing a Petition for Judicial Review in the chancery court of Davidson County, Tennessee, within sixty (60) days of the date this Order becomes a Final Order. A Petition for Reconsideration does not act to extend the sixty (60) day period; however, if the Petition is granted, then the sixty (60) day period is tolled and a new sixty (60) day period commences from the effective date of the Final Order disposing of the Petition.

ENTERED AND EFFECTIVE this the 9TH day of April, 2008.

On behalf of the Department:



Greg Gonzales, Commissioner
Tennessee Department of Financial Institutions